



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

MCO 5725R.7C
RAP
7 Jun 96

MARINE CORPS ORDER 5725R.7C

From: Commandant of the Marine Corps
To: Distribution List

Subj: ASSOCIATION OF MEMBERS OF THE SELECTED MARINE CORPS
RESERVE (SMCR) WITH A STATE NAVAL MILITIA

Ref: (a) Title 10, U.S.C. (NOTAL)

1. Purpose. To prescribe conditions under which members of the Selected Marine Corps Reserve (SMCR) may associate with a State Naval Militia.

2. Cancellation. MCO 5725R.7B.

3. Background

a. Composition

(1) The Organized Militia is established by Congress and is comprised of the National Guard and Naval Militia. Section 311 of the reference refers.

(2) Section 7851 of the reference states that, "The Naval Militia consists of the Naval Militia of the States, Territories, and the District of Columbia."

b. Federal Aspects

(1) The Naval Militia is not a Reserve component, and has dual Federal/State legal identity and may alternately execute Federal and State functions. The Reserve components have a distinctly Federal legal identity and may perform exclusively Federal functions, with which a State may not lawfully interfere or assert control.

(2) Congress is empowered to provide for organizing, arming, disciplining, prescribing training; and to call forth the militia to perform specified Federal functions; i.e. to execute the laws of the Union, suppress insurrections and repel invasions.

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(3) It is established in Federal policy that the protection of life and property and the maintenance of public order are functions which are vested primarily in the States, and that the Federal Government may assume these functions only in a few limited instances.

c. State Aspects

(1) The militia is made available to the States by the Constitution as an instrument for discharging State functions. The power to govern the militia when it is not performing Federal functions, including the power to employ the militia for the execution of State functions, is implicitly reserved to the State.

(2) Congress has granted no authority to any Federal department or officer to regulate or restrict a State's power to employ or command its Naval Militia in the execution of State functions. Conversely, the State's authority to exercise command and operational control over its Naval Militia when it is not in active Federal service does not confer any authority upon the officers and officials of the State to command Marine Corps Reserve units or individual members acting in their capacity as Reserves.

d. Membership

(1) Concurrent membership in the Naval Militia and the Marine Corps Reserve is authorized and encouraged by Congress. There is no requirement, however, for any reservist to be a member of the Naval Militia.

(2) Personnel with dual membership in the Naval Militia and the Marine Corps Reserve could be ordered into active service of the State, to perform functions in their capacity as members of the Naval Militia, which are reserved exclusively to the State and which may not be properly executed by the Armed forces of the United States. No violations of any Federal law, policy, or regulation would occur because these personnel would be serving exclusively as agents of the State for the purpose of executing the State's own constitutional powers in a status which is legally distinct from their status as reservists.

(3) Concurrent membership in the State's Naval Militia and the Marine Corps Reserve creates the potential for conflicting requirements or prohibitions to be placed on

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personnel by their State and Federal superiors. Section 7853 of the reference alleviates this potential conflict by relieving a member of all services and duty in the Naval Militia during any period of active duty with the Reserve.

e. Availability of Material for Naval Militia. Congress has authorized the Secretary of the Navy to prescribe organizational, administrative, and training standards as conditions to be met by Naval Militia units in order to qualify for Federal material support. Section 7854 of the reference authorizes the Secretary of the Navy to furnish material support to a State Naval Militia unit on the condition that at least 95 percent of the members of such unit are also members of the Naval or Marine Corps Reserve.

4. Policy

a. Status of Marine Corps Reservists

(1) Concurrent membership in the Naval Militia and SMCR is authorized. Membership in the state Naval Militia is voluntary by the individual concerned. There is no requirement for a member of the SMCR to be a member of the Naval Militia.

(2) Although there is no requirement for a member of the Marine Corps Reserve to associate with the Naval Militia, States may require all members of the Naval Militia to also be members of the Naval or Marine Corps Reserve. Therefore, it is possible that an SMCR unit may be comprised mostly or entirely of personnel who are also members of the Naval Militia.

(3) Officers and enlisted members of the Marine Corps Reserve who are also members of the Naval Militia of any State, Territory, or the District of Columbia, are relieved of all service and duty in the Naval Militia from the date of active duty until the date of release from active duty. Section 7853 of the reference refers.

b. Uniform Requirements. Marine Corps Reserve personnel who are also members of the Naval Militia and who are mobilized by the State are authorized to wear the Marine Corps uniform. To eliminate the potential for error or confusion regarding their status, as well as the possibility of adverse publicity, conspicuous Naval Militia distinguishing devices must be worn by Marine Corps Reserve personnel while in the active service of the State.

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c. Loan of Public Property. The issue or loan of public property to a State for use by the Naval Militia is authorized provided the following conditions are met:

(1) At least 95 percent of the members of the portion or unit of the Naval Militia to which the facilities would be made available are members of the Naval Reserve or Marine Corps Reserve.

(2) The organization, administration, and training of the Naval Militia unit conform to the standard prescribed by the Secretary of the Navy.

(3) Prior to loan or agreement to loan public property to a State for use by the Naval Militia, approval must be obtained from the Commandant of the Marine Corps (Code L) via the appropriate chain of command.


R. G. RICHARD
By direction

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